

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION
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Transfer Bulletin

Bulletin 99-2
April 12, 1 999

To the Issuing Authorities Licensed to Greater Media Cable:

As you know, Charter Communications ("Charter"), a St. Louis-based cable company, has agreed to purchase cable franchises in 28 Central Massachusetts communities currently owned by Greater Media ("Greater Media"). This acquisition, which constitutes a legal assignment of the affected franchises, is subject to issuing authority approval under federal and state law. Last month you should have received a transfer application from Charter, also called a Form 394, which provides detailed information on the proposed transfer. The issuing authority's receipt of the completed Form 394 triggers a statutory maximum 1 20-day municipal review period. Additionally, the transfer application review process is subject to our procedural rules, including the requirement that a public hearing be held on the transfer within 60 days of receiving an application.

In light of the burden facing issuing authorities to read and digest Charter's transfer application, to hold a public hearing, and to issue a decision, as well as the considerable burden placed on both Charter and Greater Media to respond to 28 separate jurisdictions, the Division has carefully considered a written request from Charter that the Division conduct four regional public hearings on the pending transfer applications. Charter proposes that these hearings be held in lieu of hearings each of the 28 issuing authorities would otherwise be required to hold, subject to our procedural rules. '

Our judgment on this request is guided by the state and federal laws applicable to the transfer standard of review. Section 7 of M.G.L. c. 166A states that "[n]o license or control thereof shall be transferred or assigned without the prior written consent of the issuing authority, which consent shall not be arbitrarily or unreasonably withheld. Such consent shall be given only after a hearing upon a written application therefor on forms to be prescribed by the division." The legal standard that applies to approving or denying the transfer is quite narrow. The issuing authority may consider "*only* the transferee's (a) management experience, (b) technical expertise, (c) financial capability and (d) legal ability to operate a cable system under the existing license." 207 CMR 4.04(1)(a)-(d). Furthermore, under federal law, 47 U.S.C. sec. 537, *the transfer is deemed approved if you take no action within 120 days of your receipt of the transfer application.*

We conclude that it would be unnecessarily burdensome for local officials and company representatives to require issuing authorities to conduct 28 separate hearings on the pending transfer application. We find that the proposal represents a reasonable way to streamline the process, while preserving the right of local officials to carefully evaluate and render their own decision on the

merits of the transfer application. We also believe regional hearings will facilitate a thorough, timely and efficient issuing authority review of the proposed transaction.

We therefore approve Charter's request for regional transfer hearings, subject to the following conditions:

First, since we received Charter's request on April 1, 1999 we have been advised that most communities in the Chicopee system have previously scheduled individual transfer hearings. Therefore, we approve the request for regional hearings only with respect to the franchise areas in the Worcester system. We therefore direct the communities of Chicopee, East Longmeadow, Easthampton, Hampden, Ludlow, Southampton and Wilbraham to proceed with their own municipal hearings, as provided under federal and state law. Alternatively, any of these Chicopee system communities who still wish to participate in the regional hearings in the Worcester area should notify the Cable Division as soon as possible, but no later than Friday, April 16, 1999. Consequently, we will require only three (3) regional hearings, rather than the four Charter requested. We have *tentatively* designated the following dates and sites for the three hearings, which will begin at **7:00 P. M.:**

Wednesday, May 5, 1999 - The Holiday Inn on Lincoln Street in Worcester

Thursday, May 6, 1999 - Davis Hall at Nicholas College on Center Road in Dudley

Wednesday, May 12, 1999 - The Loew Education Building at Tufts Veterinary School, Rt. 30 in North Grafton.

Second, because the Cable Division is the appellate **body** for any transfer denials, we cannot assume any formal role in the initial review of the transfer application. Therefore, while we approve Charter's general request for regional hearings, we will designate a special magistrate to conduct those hearings. The special magistrate will preside over the hearings; coordinate, review and evaluate information compiled in the process, and make *non-binding* recommendations to all participating issuing authorities for their ultimate approval or denial. The special magistrate will be responsible for compiling information about the proposed transfer pertaining to Charter's ability to "step into the shoes" of Greater Media. Bay Shore Cable TV Associates v. Weymouth, Docket No. A-55 at 3 (November 13, 1985). In cooperation with the Cable Division, Greater Media and Charter have agreed to make the necessary arrangements for these regional hearings, including reserving facilities, providing legal notice, and arranging for stenographic, video or other tape record of the hearings.

We expect that many issuing authorities will want to take advantage of one or more regional hearings rather than convene a separate hearing, especially in light of the fact that Charter has represented that members of its corporate management team will likely be available for the regional hearings. However, recognizing the primary role of the issuing authority in licensing cable operators under state law, *any issuing authority that would prefer to hold a separate hearing has the right to opt-out of the regional hearing process*. Accordingly, please advise the Cable Division no later than **Monday, April 26, 1999** if you would like to hold a separate hearing on this matter. Otherwise, we will presume that you will participate in one or more of the regional hearings.

We look forward to assisting each community as it moves through the transfer process. Please do not hesitate to contact us if you have questions. For further information on the regional hearings, please call Kevin Wrege, our General Counsel, toll free at 888-622-2588. You can also E-mail us at Mcable@state.ma.us.